

CHAPTER 7 INVESTIGATION OF DISEASE, INJURY, OR DEATH

A. PERSONNEL STATUS

1. Active Duty and Reserve Members. When a military member becomes ill or is injured, certain statutory rights or benefits accrue to the member if the disability was attributed to military service, *i.e.*, in the Line of Duty (LOD), and not due to the member's own misconduct. A report of investigation may be necessary to provide the basis for LOD/Misconduct determinations by the Coast Guard, as well as by other agencies. A LOD determination is also necessary for members who died on active duty, since certain dependents' benefits are contingent on a finding that the death occurred in the LOD.
2. Temporary Reserve Members. When a member of the Temporary Reserve is injured or dies as a result of physical injury, certain statutory rights or benefits accrue if the injury is incurred incident to service while performing active duty, or engaged in authorized travel to or from that duty. 14 U.S.C. § 707. Investigations into the injury or death of temporary members of the Reserve shall be conducted in accordance with the provisions of Articles 7.O.1 and 7.P of this manual.
3. Coast Guard Auxiliary Members. When a member of the Coast Guard Auxiliary is injured or dies, certain statutory rights accrue if a determination is made that injury or death occurred while that member was performing any duty to which that member had been assigned by competent Coast Guard authority. See 14 U.S.C. § 832. Investigations into the injury or death of Coast Guard Auxiliary members shall be conducted in accordance with the provisions of Articles 7.O.2 and 7.P of this manual.
4. Civilian Employees. When a civilian employee of the Coast Guard is injured or dies, certain statutory rights accrue if a determination is made that injury or death occurred while that civilian employee was performing work-related duty. Investigations into the injury or death of civilian employees shall be conducted in accordance with the provisions of Articles 7.O.3 and 7.P of this manual, and as directed by Commandant (CG-121), subject to the guidance of the Office of Personnel Management (OPM) and the Department of Labor (DOL).

B. USES OF THE LOD DETERMINATION

1. Eligibility for Physical Disability Retirement or Separation. Members who sustain disabilities that are or may be permanent may be eligible to receive certain retirement or severance pay benefits. These payments cannot be made if the disability resulted from the member's intentional misconduct or willful neglect or was incurred during a period of unauthorized absence. See 10 U.S.C. § 1207. Under the provisions of the Physical Disability Evaluation System, (COMDTINST M1850.2 (series)), physical evaluation boards are bound by final LOD determinations that are available at the time the physical evaluation board considers the member's case and which, if adverse to the member, were previously presented to the member, along with the right to a hearing and representation by counsel. PDES boards shall direct the command to conduct thorough investigations into the injury or illness of a member if the board is not satisfied that the line of duty determination

has been adequately made.

2. Reserve Medical Care/Pay and Allowances. Determinations are used to determine the eligibility of certain members of the United States Coast Guard Reserve for medical care as well as pay and allowances. *See* 37 U.S.C. §§ 204(g)-(h); and 14 U.S.C. § 705(c).
3. Lost Time. Determinations are used to identify lost time that must be made up by Coast Guard members, if inability to perform duties was because of intemperate use of drugs or alcohol, or because of disease or injury resulting from member's misconduct. *See* 10 U.S.C. § 972.
4. The Department of Veterans Affairs (VA). The VA uses the findings to determine eligibility for disability compensation and hospitalization benefits. *See* 38 U.S.C. §§ 1110, 1131, 1710, and 1712. Under their regulations, a finding by the Coast Guard that injury, disease, or death resulting from an injury or disease occurred in the LOD would be binding on the VA unless it is patently inconsistent with the requirements of laws administered by the VA. *See* 38 C.F.R. 3.1.m.
5. Payment of Survivor Benefit Plan Annuities to Surviving Spouses. A determination of whether the death of a member on active duty was in the LOD is needed in order to calculate and pay survivor benefit plan annuities under the law. *See* 10 U.S.C. § 1448(d). Even if a Commanding Officer or Officer in Charge is confident that a deceased member had no spouse, due to the possibility of such a claim, a LOD determination shall be made for all deceased members who die on active duty. There has been no change to the presumption that members were in the LOD at death. Therefore, unless there is clear and convincing evidence to rebut a LOD presumption, Commanding Officers and Officers in Charge should not make a "Not LOD" recommendation. *See* Articles 7.E, 7.M, and 7.P regarding death investigations.

C. WHO NEEDS LOD/MISCONDUCT DETERMINATION?

1. Members of the Coast Guard (Regular or Reserve). Members who die or incur or aggravate an injury or disease while on active duty or traveling to or from such duty.
2. Members of the Coast Guard Reserve. Members of the Reserve who die on active duty as noted in Article 7.C.1, above, or who incur or aggravate an injury or disease while:
 - a. Performing active duty for training for any period of time, or while on inactive duty training;
 - b. Traveling directly to or from the place the member performs active duty, or inactive duty for training; or
 - c. Remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight, between successive periods of inactive-duty training, if the site is outside reasonable commuting distance from the member's residence.
3. Temporary Members. LOD determinations are inapplicable to Temporary Members of

the Coast Guard Reserve, Coast Guard Auxiliary Members, and Civilian Employees, but rather, a different analysis applies to determine if such personnel are entitled to certain benefits. *See* Article 7-O of this manual for the appropriate standard to use when investigating the death or injury of such personnel.

D. WHEN A LOD/MISCONDUCT DETERMINATION IS REQUIRED

General findings concerning LOD/Misconduct must be made in each case in which a member of the Coast Guard, whether hospitalized or not, has a disease or injury that results in any of the following:

1. Death of a member on active duty;
2. The member's inability to perform duties for a period in excess of 24 hours (as distinguished from a period of hospitalization for evaluation or observation);
3. The likelihood of a temporary or permanent disability that may entitle the member to disability benefits; or
4. Medical treatment for Reserve members regardless of the ability to perform military duties.

E. HOW DEATH IMPACTS LOD/MISCONDUCT DETERMINATIONS

Findings concerning LOD/Misconduct shall be made after the death of a Coast Guard member on active duty. *See* Article 7.P of this chapter regarding general requirements for investigation of death cases. *See* Articles 7.M and 7.N regarding special circumstances impacting death investigations.

F. THE LOD DETERMINATION

1. General Rule. LOD determination authorities shall presume that a Coast Guard member's death (on active duty), disease or injury was incurred in the LOD and not due to misconduct unless clear and convincing evidence shows otherwise.
2. Definitions.
 - a. Clear and convincing evidence. This term means such evidence as would convince an ordinarily prudent-minded person beyond a well-founded doubt. It is a higher degree than preponderance of the evidence ("more likely than not") standard, but it does not require proof beyond a reasonable doubt as in criminal cases.
 - b. Misconduct. Death, injury or disease is the result of a member's misconduct if it is either intentionally incurred or is the result of willful neglect that demonstrates a reckless disregard for the foreseeable and likely consequences of the conduct involved. Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct. The fact that the conduct violates a law, regulation, or order - or the fact that the conduct is engaged in while the individual is intoxicated - does not, of itself,

constitute a basis for a determination of misconduct.

- (1) Proximate Cause. A finding of misconduct can not be made unless the misconduct is the proximate cause of the injury or disease. If a resulting injury or disease is such that it could have been reasonably foreseen from the course of conduct, it is said to be a “proximate result,” presuming that the individual’s conduct actually was the cause or a cause of the injury or disease and there was no unforeseeable, superseding cause.
 - (2) Examples. If an individual is injured by an intentionally self-inflicted gunshot wound, (other than in a bona fide suicide attempt, *see* Article M.1.d of this chapter) the injury is presumptively due to own misconduct. If an individual handles a firearm in a grossly negligent manner and thereby is wounded, that, too, would be an injury due to own misconduct because a wound is a reasonably foreseeable result of the grossly negligent handling of firearms. If, on the other hand, an individual was standing on a sidewalk and, while handling a firearm in a grossly negligent manner, was struck by an automobile that had gone out of control (unrelated to the presence of the firearm), the injuries would not be due to own misconduct because they would not have been a reasonably foreseeable result (proximate result) of the wrongful conduct in which the individual was engaged.
- c. Unauthorized Absence. Any injury or disease incurred while the member is absent without authority will be handled as “not in the LOD” unless the member was not mentally responsible at the inception of the unauthorized absence. *See* Article M of this chapter. To establish that a person was absent without authority for LOD purposes, it must be shown that the member was avoiding duty by deserting the service, or was absent without leave, as that term is defined in Article 86 of the Uniform Code of Military Justice. The defenses available under Article 86 shall be taken into consideration when determining whether a member was absent without leave for these purposes.
 - d. Authorized Travel Route. Unless otherwise directed, the route an ordinarily prudent person would take between authorized departure and destination points.
 - e. Materially Deviating. A travel route taken instead of an authorized travel route, either intentionally or due to willful neglect that an objective and prudent person would regard more as a “frolic” than “detour.”
3. Possible LOD Determinations. Two separate determinations are required. They are: (1) whether the member was in the LOD, and (2) whether the member’s death (on active duty) or injury or disease was proximately caused by his or her own misconduct. Death, injury or diseases proximately caused by the member’s own misconduct can never be said to be in the LOD. Misconduct presupposes mental responsibility for one’s actions. Mental responsibility may be absent (as in the case of suicide, *see* Article 7.M.1) or negated by other factors (such as intoxication and drug abuse, *see* Article 7.M.2). Accordingly, there are only three possible findings in a LOD/Misconduct determination, as described below:
 - a. In the LOD and Not Due to Own Misconduct. This conclusion is *presumed* unless rebutted by clear and convincing evidence that establishes the member was absent without authority; or clear and convincing evidence establishes that the injury or disease

was proximately caused by the member's own misconduct. Examples of LOD and Not Due to Own Misconduct include:

- (1) A member becomes a casualty of hostile action.
 - (2) The injury of a member while present for duty and the member's own misconduct did not proximately cause the injury.
 - (3) The injury of a Coast Guard Reserve member while performing inactive duty training or while traveling directly to or from inactive duty training and the member's own misconduct did not proximately cause the injury.
 - (4) A member dies (on active duty) due to own conduct that does not rise to the level of misconduct, either because it was not of a willful or wanton character or because the member lacked mental responsibility for his or her actions at the relevant time.
- b. Not in LOD but Not Due to Own Misconduct. This result is obtained when a member was not in LOD status (because the member was absent without authority or was materially deviating from an authorized travel route) BUT whose misconduct did not proximately cause the injury or disease. Examples of Not LOD but Not Due to own Misconduct include:
- (1) The death of a member while absent without authority in which the member's own conduct did not proximately cause the injury; *e.g.*, the member is struck by a car, or is the victim of a felonious assault.
 - (2) A Coast Guard Reserve member incurs an injury while returning home after performing inactive duty training. The accident occurred at a time and place constituting a material deviation from the member's authorized travel route. However, the member's own conduct did not proximately cause the injury.
- c. Not in LOD because of Own Misconduct. The proximate cause of the injury or disease was the member's own misconduct. It does not matter if the member was absent without authority or otherwise not in a duty status. In this category, the member's misconduct precludes the member from being within the LOD. Examples of Not LOD because of Own Misconduct include:
- (1) The death of a member while present for duty; however, the member's own misconduct, for which the member was mentally responsible, proximately caused the injury.
 - (2) The injury of a member while absent without authority, during which, the member's own misconduct, for which the member was mentally responsible, proximately caused the injury.
 - (3) The injury of a Coast Guard Reserve member while performing inactive duty training; however, the member's own misconduct, for which the member was mentally responsible, proximately caused the injury.

G. RESPONSIBILITY TO CONVENE A PRELIMINARY INQUIRY

1. For Members of the Coast Guard. The commanding officer of the unit of the member who

is the subject of the LOD/Misconduct investigation is responsible to convene a preliminary inquiry or investigation. If the command is unable to conduct such an inquiry or investigation, a request shall be submitted to superior authority to convene the investigation. When Coast Guard personnel from more than one command are injured in an incident that must be investigated under this manual, a single investigation of the matter should be conducted whenever practicable. The commanding officers involved should agree upon which command will take the lead to investigate and process the case. The agreement will be noted in the Investigative Report. Conflicts may be resolved by referring the matter to the least senior common (shared) superior authority.

2. For Members of Other Services. Whenever a member of an armed service other than the Coast Guard is injured or incurs disease under circumstances that warrant investigation under this manual, and it would be appropriate for an officer in command of an activity of the Coast Guard to convene an investigation (*e.g.*, the individual is attached to a Coast Guard command or is being treated in a Coast Guard medical facility), the nearest command of the parent service of the individual shall be notified. If requested by the other service, an appropriate investigation under this instruction shall be convened – using this manual for guidance - and the report thereof forwarded in accordance with the request. If the other service desires that its administrative procedures govern the investigation (*i.e.*, conducted under the JAGMAN instead of under the AIM), then the Coast Guard command may decline to investigate but must notify the other service of that decision. No further action need be taken within the Coast Guard after the report has been forwarded to the other service for consideration and action.

H. TYPE OF INVESTIGATION REQUIRED

1. Preliminary Inquiry. Each death (on active duty), injury or disease requiring LOD/Misconduct determinations, as discussed in Article 7.D, above, will be the subject of a preliminary inquiry, as described in Article 1.F.4, above. The findings of the preliminary inquiry determine the appropriate type of investigation required.
2. Circumstances Under Which No Further Investigation Is Required. If, following a preliminary inquiry, the situations set forth below occur, the member's commanding officer may make an administrative determination that the death, injury or disease was incurred in the LOD and not due to member's own misconduct. In that case, there would be no need to convene a LOD investigation. The commanding officer or officer in charge shall report a death "in LOD" determination to the next superior command via Letter Incident Report (LIR). However an "in LOD" determination in a non-fatality investigation need not be reported further along the chain of command, unless specifically required by a superior command. There is no documentation requirement for an administrative determination in a non-death case made in accordance with this section, except that the finding should be noted in the unit log and in the member's personnel data record (PDR) as an Administrative Remarks (CG -3307).
 - a. Casualties stemming from hostilities with an enemy (but see Article 7.P.1.d(4) of this Chapter for other investigative requirements).
 - b. Member dies on active duty from injury or disease without any indication of unlawful

status (AWOL) or misconduct on the part of the deceased member. Although no investigation is required, a LOD determination pursuant to a preliminary inquiry is still required to be made by the Command in such circumstance.

- c. Injuries or diseases of members, if (1) either the ailment is of natural origin that does not involve misconduct, drug or alcohol abuse, or the injury is a simple injury (i.e., a sprain, contusion, or minor fracture) not likely to result in a permanent disability; and (2) the disease or injury did not happen while the member was absent without authority and was not caused by the member's own misconduct.
 - d. Example. An active duty member playing softball at lunch with the unit softball team sprains her ankle after sliding into third base. Due to the nature of the injury, and the nature of the member's duties, the clinic sends her home for two days "sick in quarters." Under Article 7.D, a LOD/Misconduct determination is required, due to the member's inability to perform duties for a period in excess of 24 hours. The member's commanding officer assigns an ensign to do a preliminary inquiry, telling him to give the CO and XO a verbal brief on his findings. The ensign interviews the member, the team captain, and the treating physician. He reports to the CO and XO that the member was on duty, no misconduct was involved, and the physician does not believe that the injury will result in a permanent disability. Based on this report, the CO finds that the injury was incurred "in the LOD," and "not as a result of the member's own misconduct. The XO documents this finding in the unit log, and the member's PDR by preparing an Administrative Remarks (CG-3307). No further action is necessary.
3. Use of Injury Reports or Letter Incident Reports (LIR).
- a. An Injury Report (CG-3822), a Report of Illness of Reservist (CG-4614), or a LIR with such an injury report form as an enclosure, may be used in any case in which LOD/Misconduct findings are required by this manual, and in which:
 - (1) The commanding officer, based upon the findings of the preliminary inquiry, finds that the injury or disease was incurred "in the LOD" and "not as a result of the member's own misconduct"; and
 - (2) The likelihood of permanent disability or other entitlement to disability benefits to the member may be involved.
 - b. Samples of these forms, and instructions for completing them are provided as Exhibits (7-G) and (7-H) of this manual.
 - c. LIRs shall be processed and acted upon in the same manner as Reports of Investigation, per Article 7.J, below. Once approved by the Final Action Authority, a LIR will be forwarded to the member's command, for filing in the member's PDR, with a copy to CGPC-adm-3 for filing in the official PDR.
4. Investigative Report.
- a. A commanding officer must convene an investigation, even after a preliminary investigation, to make findings concerning LOD/Misconduct when:

- (1) The death (on active duty), injury or disease was incurred under circumstances that suggest that a finding of misconduct might result;
 - (2) The death (on active duty), injury or disease was incurred under circumstances that suggest that a finding of “not in the LOD” might result;
 - (3) The death (on active duty), injury or disease was incurred under circumstances in which lack of mental responsibility (*see* Article 7.M.1) may be inferred due to apparent likelihood of actual or attempted suicide, intoxication or drug use;
 - (4) There is a likely chance of permanent disability and the commanding officer considers the convening of an investigation necessary to ensure an adequate official record is made concerning the circumstances surrounding the incident; or
 - (5) The injured member is in the Coast Guard Reserve and the commanding officer considers an investigation necessary to ensure an adequate official record is made concerning the circumstances surrounding the incident.
- b. Exhibit (7-B) is a guide for investigating officers conducting a LOD investigation under this manual. Article 7.M of this manual contains guidance on LOD/Misconduct determinations in various situations. Exhibits (7-E) and (7-F) are check-off lists for completing injury or illness investigations for Regular and Reserve members of the Coast Guard, respectively.

I. CONVENING AUTHORITY’S ACTION ON THE INVESTIGATION

1. Action by Convening Authority. In each case in which a member of the Coast Guard has died on active duty or suffered an injury or contracted a disease, and the circumstances are such that an investigation was required and conducted under the provisions of this manual, the Convening Authority shall either return the Investigative Report for further investigation, or shall take one of the following actions:
 - a. The Convening Authority shall express, in the Action on the record, the conclusion that the death, injury or disease was incurred “in LOD” and “not due to the member’s own misconduct” when:
 - (1) The Administrative Investigation was directed to, and did inquire into, the circumstances surrounding the occurrence of the death, injury or the contraction of a disease, and
 - (2) The Convening Authority concludes that this is the correct finding (or that clear and convincing evidence is not available to rebut the presumption of “in the LOD” and “not misconduct”).

The Convening Authority may take this action regardless of whether it differs

from or concurs with an opinion expressed by the Investigating Officer or intermediate reviewing official(s) making recommendation(s) to the Convening Authority.

- b. The Convening Authority may express, in acting on the Investigative Report, any of the three permissible findings described in Article 7.F.3, above (LOD and Not Due to Own Misconduct; Not LOD but Not Misconduct; or Not LOD because of Own Misconduct) when:
- (1) The Administrative Investigation was directed to, and did inquire into, the circumstances surrounding the occurrence of the death, injury or the contraction of a disease, and
 - (2) The member involved was designated a Party before the Administrative Investigation which conducted a hearing, and was fully accorded Party rights or, in the case of a deceased member who died on active duty, a Representative of a surviving spouse was similarly accorded the rights of a Party with respect to notice of and opportunity to participate in a hearing.

The Convening Authority may select one of those three outcomes regardless of whether it differs from or concurs with an opinion expressed by the Investigating Officer or intermediate reviewing official(s) making recommendation(s) to the Convening Authority.

- c. The Convening Authority shall afford the member (or in the case of a member who died on active duty, the Representative of the member's next of kin (NOK) or spouse) a hearing, or shall forward the Investigative Report to the command to which the member is (or was) then attached so that a hearing may be afforded when:
- (1) The member (or in the case of a member who died on active duty, the Representative of the member's surviving spouse) was not designated a Party before the Administrative Investigation, or having been so designated, the member (or the surviving spouse's Representative) was not fully accorded Party rights; and
 - (2) Upon review of the Investigative Report, the Convening (or higher) Authority has substantial *concerns* that the death, injury or disease of the member was incurred not in the LOD or was caused by the member's own *misconduct*.

Convening Authorities should consult with their servicing legal offices prior to taking either course of action described immediately above in Articles 7.I.1.b and c. Note: If there is no evidence to indicate that the deceased member was married, at the time of death, a hearing is not required.

2. LOD/Misconduct Informal Hearings.

- a. Elements of Informal Hearing. The hearing required by the above Article is an informal appearance before the commanding officer or Convening Authority, designed to ensure

that the member (or in the case of a member who died, the Representative of the member's surviving spouse) has the opportunity to present any information he or she wishes the commanding officer or Convening Authority to consider on the issue of a potential adverse "not LOD" or "misconduct" finding. An informal LOD/Misconduct hearing shall include the following requirements:

- (1) The member (or in the case of a member who died on active duty, the Representative of the member's surviving spouse) shall be advised that questions have arisen concerning the circumstances under which an injury or disease was incurred and that LOD/Misconduct determinations must be made;
- (2) In the case of a member who died on active duty, leaving a surviving spouse, the spouse (or spouse's Representative) shall be advised that a determination of not LOD, whether by reason of misconduct or otherwise, will bar payment of all or part of a survivor benefit plan annuity;
- (3) If a (living) member is suspected of having committed an offense, advice as required by Article 31(b), UCMJ, shall also be given;
- (4) The member (or spouse's Representative) shall be advised of the right **not** to provide information that the member may have (or may have had) regarding the origin, occurrence, or aggravation of the injury or disease (or death); and
- (5) The IR, as well as any statement, record, or other evidentiary matter received or considered by the Convening Authority shall be made available for inspection and copying by the member (or spouse's Representative), well in advance of the hearing. This disclosure requirement does not extend to analysis, opinions and recommendations, but is limited to factual matters.

b. Documentation.

- (1) Exhibit (7-A-1) shall be used to notify the member (or 7-A-2 for a spouse's Representative) of these rights prior to the hearing, and to document his or her elections concerning these rights. A copy of the notification and the signed acknowledgement of rights shall be included in the investigation as enclosures to the commanding officer's endorsement.
- (2) The member (or surviving spouse, via the spouse's Representative) shall be provided a Privacy Act statement in accordance with the provisions of this manual. See Exhibits (7-C-1 and 7-C-2).

c. Written Materials in Lieu of a Hearing. The member (or spouse's Representative) may elect to provide written materials in lieu of a personal appearance at the hearing before the Convening Authority.

d. Consultation with Counsel. The member shall in all cases be provided the opportunity to discuss the Report and all other evidentiary materials considered with counsel (or with another person by choice of the member). For members, the servicing legal office will arrange for such advice, if the member desires. In most cases, a telephonic consultation is sufficient; however, where counsel is geographically located in close proximity to the command, personal visits are preferred. The member's command shall provide the attorney assigned (or another individual chosen by the member) the same

package presented to the member. A surviving spouse may consult with the counsel or person of his or her choice (at his or her own expense).

- e. Representation at Hearing by Counsel. In all hearings where the injury or disease might result in entitlement to disability benefits, the member shall have the right to be represented by counsel (assigned military counsel, or civilian counsel at the member's expense). In all death cases, the surviving spouse may be represented during the proceedings by civilian counsel, at the spouse's own expense.
- f. Presentation of Information. The member (or spouse's Representative) shall be given full opportunity to present any relevant matter in his or her behalf (or on behalf of a deceased member), either in the form of new information, or as explanation or rebuttal of previously entered evidence. Convening Authorities shall ensure the member (or spouse's Representative) is given a reasonable period of time to prepare for the hearing, and that time should not begin to "run" until the member (or surviving spouse) is able to fully participate (either personally or in conjunction with his or her counsel or Representative) in the process.

J. REVIEW, APPROVAL & RECORDING OF LOD/MISCONDUCT FINDINGS

1. Action by Officer Exercising Final Action Authority. Unless the Convening Authority is empowered to exercise Final Action Authority, the Investigative Report shall be forwarded through the chain of command to an officer so authorized. This officer or official may take any action on the report that could have been taken by the Convening Authority. With respect to conclusions concerning LOD/Misconduct, the Final Action Authority shall indicate approval, disapproval, or modification of investigative report, or else return the record for further investigation. As Final Reviewing Authority, article 6.E of reference (a) requires that a "stand alone" final action memorandum summarizing the facts upon which your final action and is based. The final action memorandum should not expressly incorporate information or simply approve the findings of fact contained in prior endorsements or the investigative report. By ensuring the final action memorandum is complete and stands alone, the law will protect from release those documents reflecting the underlying critical review and deliberative process. Opinions and recommendations should not be addressed in the final action except to the extent necessary to properly resolve issues and to take action.
2. Legal Review of Adverse Determinations for Legal Sufficiency. In cases where determinations are adverse to the member (or surviving spouse), Final Action shall only be taken after a judge advocate renders a written opinion concerning the legal sufficiency: of the prior findings, opinions, recommendations in the investigation; of the recommendations by the Convening Authority and any intermediate reviewing officials; and of the legal support for a proposed Final Action.
3. Adverse Determinations and Right to Appeal.
 - a. In any case where the Final Action is adverse to the member (or surviving spouse), the findings of "not in the LOD" and/or of "misconduct" are subject to written appeal to the Judge Advocate General (Commandant (CG-094)). The member shall be provided a copy of the Final Action, and shall have 10 working days in which to file an appeal. In

the absence of good cause shown, the member's right to appeal is waived if a written appeal is not delivered by the member to the member's commanding officer or officer-in-charge by the end of the tenth working day following receipt of the Final Action.

- b. In the case of a member who died on active duty, the Representative of the member's surviving spouse shall be given 20 working days in which to file an appeal. In the absence of good cause shown, the Representative's right to appeal is waived if a written appeal is not delivered by the Representative to the deceased member's commanding officer or officer-in-charge by the end of the twentieth working day following receipt of the Final Action.
 - c. Such appeals must be in writing, and shall be forwarded via the member's chain of command. The officer who took Final Action on the investigation shall ensure that the complete record accompanies the appeal when it is routed, through the chain of command to Commandant (CG-094). Commandant (CG-094) actions on appeal shall be edited to remove any personal references ("sanitized"), indexed, and published for the future guidance of Convening and Final Action Authorities.
4. Documentation of Determination. In addition to the Final Action (or decision on administrative appeal), the ultimate determination of LOD/Misconduct will be entered into the unit log and into the member's service record.

K. RELATIONSHIP TO DISCIPLINARY ACTION

An adverse determination as to LOD/Misconduct is not a punitive measure. Disciplinary and other adverse administrative actions, if warranted, must be taken independently of any such determination. However, a single Administrative Investigation may be convened and used to aid decisions on both LOD/Misconduct and disciplinary matters. While an Administrative Investigation may be properly convened to determine issues of LOD/Misconduct in addition to disciplinary and performance of duty issues, a LOD/Misconduct Hearing is distinct and cannot mete out sanction of any kind. Conversely, a favorable determination as to LOD/Misconduct neither precludes disciplinary or adverse administrative action, nor carries any bearing, in and of itself, with respect to issues of guilt or innocence under the UCMJ, or toward the ultimate issue of desirability to retain a member in a separation proceeding. However, the loss of rights or benefits resulting from an adverse LOD/Misconduct determination may be relevant to the punishment awarded in a disciplinary proceeding and, at the request of the member, may be admissible as matters in extenuation and mitigation. Of course, the evidence used to reach a LOD/Misconduct determination is admissible in accordance with the rules of proceedings other than the LOD/Misconduct Hearing.

L. WHEN CLAIMS ARE INVOLVED

1. Examination of Reports. Careful preparation and examination in consultation with legal counsel must occur in any report involving injury or death in which potential claims by or against the Government may be involved. This is of special concern where medical care has been furnished and the Government may be entitled to recover third Party medical claims under the Federal Medical Care Recovery Act. Similar care should be exercised in any case involving death, serious injury, or serious illness in which the adequacy of medical care is reasonably in issue.

2. Combining Investigations. There is no prohibition against combining LOD investigations with claims investigations. *See* Article 1.G. Facts elicited in a claims investigation may be sufficient and may be used as a basis for determining “in LOD and Not Due to Misconduct” findings in the unit log and in the member’s service record or completing injury reports or Letter Incident Reports as authorized in Article 7.H, above. However, in certain circumstances, investigations should not be conducted as a LOD investigation, but rather should be conducted solely as a claims investigation pursuant to Coast Guard Claims and Litigation Manual, COMDTINST M5890.9. Convening authorities shall consult with their servicing legal office to determine which type of investigation should be conducted (and as often as necessary thereafter). *See* article 3.B.2.a (13).
3. Forwarding Copies of Reports in Particular Cases. Where investigations have been combined or directed to fulfill more than one function, and/or there is need for retaining the original record at the command or reviewing level for such purposes as courts-martial, contractual disputes, claims, litigation, etc., the command retaining the original copy shall ensure that a legible copy with all enclosures is forwarded for review. This same practice applies when the original record is forwarded for claims purposes to another command, such as to Commandant (CG-1012) in a Federal Medical Care Recovery Act case.

M. LOD/MISCONDUCT DETERMINATIONS FOR VARIOUS SITUATIONS

1. Mental Responsibility.

- a. General Rule. A member may not be held responsible for his or her acts and the foreseeable consequences if, as the result of mental defect, disease or derangement, the member was unable to appreciate the nature of such acts. In addition, a member may not be held responsible for his or her acts or the foreseeable consequences if, as the result of a mental condition not amounting to a defect, disease, or derangement and not itself the result of prior misconduct, the member was unable to comprehend the nature of such acts or to control his or her actions. However, character and behavior disorders manifested by a defect of personality, lack of will power, antisocial behavior, ungovernable passion, etc., do not necessarily demonstrate a lack of mental responsibility authorizing exoneration of the member for the member’s actions.
- b. Certain Induced Impairments. An injury that was the proximate result of acts performed while the member’s mental faculties were impaired would be deemed to have been incurred as the result of the member’s own misconduct if that impairment was as the result of wrongful (e.g., voluntary and without prescription) ingestion of a hallucinogenic drug or other substances (i.e. controlled substance) that the member knew or should have known or believed or intended would cause an impairment of physical or mental capabilities. Certain properties of such drugs are notorious and their use is prohibited by Coast Guard Regulations; hence the impairment may also support a finding of misconduct.
- c. Presumption. There is a presumption that all members are mentally responsible for their acts. This presumption makes it unnecessary, in most cases, for an Administrative Investigation to seek evidence that a member was mentally responsible at a certain time unless credible evidence is developed or discovered tending to indicate that the member

was not mentally responsible at that time. Such evidence regarding the lack of mental responsibility may include the specific circumstances attending certain acts; evidence of previous abnormal, irrational, or aberrant behavior; expert opinion evidence of mental illness; or other evidence directly or indirectly tending to indicate lack of mental responsibility. In that case, lack of mental responsibility must be established by clear and convincing evidence (*See* definition at 7.F.2.a) before the presumptions of “in LOD” and/or “Not Due to Own Misconduct” may be overcome. In such cases, evaluation by a psychiatrist may be required.

d. Suicide and Suicide Attempts.

- (1) In view of the strong human instinct for self-preservation, an apparent suicide or a bona fide suicide attempt (as distinguished from other acts of intentional self-inflicted injury, or suicidal “gestures”) or substantial evidence of such an attempt is sufficient to rebut the presumption of mental responsibility and raise the inference of lack of mental responsibility. In these cases:
 - (a) further evidence must be sought on the question of mental responsibility, including, in most circumstances, expert psychiatric evaluation (or a psychological autopsy); and
 - (b) the determination of whether the death, disease or injury resulting from the suicide or suicide attempt was due to misconduct must necessarily rest upon other evidence (which, in order to establish misconduct, would have to establish mental responsibility by clear and convincing evidence).
- (2) Intentional self-inflicted disease or injury, not prompted by a bona fide suicidal intent, is at most a suicidal gesture. Such disease or injury, unless lack of mental responsibility is otherwise inferred from the facts established to an extent to rebut the presumption of mental responsibility, is deemed to be incurred as the result of the member’s own misconduct.
- (3) Where a suicide, suicide attempt or suicidal gesture occurred while the member was absent without authority, mental responsibility at the beginning of the absence without authority must be determined in addition to mental responsibility at the actual time of the suicide attempt. If the member was mentally responsible at the time that the unauthorized absence (“UA”) began, then the member may be found to have been not in LOD at the time of the suicide, suicide attempt, or suicidal gesture. See Article 7.M.1.e.(2), below.

e. Specific Circumstances.

- (1) Except as provided in Article 7.M.1.b (wrongful ingestion of a controlled substance leading to impairment and death or disease or injury), if a qualified medical authority, recognized by the Convening Authority, determines that a member was not mentally responsible at the time death, injury, disease, or incapacity was incurred, a finding of misconduct shall not be made.
- (2) If the death, injury, disease, or incapacity for duty occurred during the member’s

unauthorized absence, the member's mental responsibility at the start of the unauthorized absence ("UA") must be considered before a LOD/Misconduct determination is made. Except as provided in Article 7.M.1.b. (wrongful ingestion of a controlled substance leading to impairment and death or disease or injury), a member is not absent without proper authority if, at the inception of such absence, the member was not mentally responsible for going UA, and this lack of mental responsibility continued without interruption until the time of the death, injury or disease. Under such circumstances, the absence should be excused as unavoidable and a finding of not in the LOD should not be made on the basis of the excusable absence.

2. Intoxication and Drug Abuse.

a. Intoxication.

- (1) General Rule: When an injury or ailment is incurred as the proximate result of prior and specific voluntary intoxication, the presumption of not misconduct may be rebutted, and the death, disease, or injury may be determined to have been incurred as the result of misconduct. The issue is determined by the degree of impairment, and the nature of the conduct or activity undertaken while in that state of intoxication and the overall circumstances. In order for intoxication to be the basis for a determination of misconduct respecting a related death, disease, or injury, there must be clear and convincing evidence that: (a) the member's physical or mental faculties were impaired due to intoxication at the time of the death, disease, or injury; (b) the extent of the impairment was such as to render the conduct grossly negligent (such as to demonstrate a reckless disregard for the consequences); and (c) the impairment was the proximate cause or a proximate cause of the injury.
- (2) In order to be able to conclude that the member's faculties were impaired, the extent of the impairment was grossly negligent, and/or that such impairment was in-fact the proximate cause of the injury, reliance on accepted medical principals or expert evaluation may be necessary.
- (3) Examples. A member voluntarily consumes alcohol and becomes intoxicated at a "wetting down" party. With a blood/alcohol level of 0.14, the member is legally intoxicated in the jurisdiction.

Scenario 1: On the walk leading from the party to a waiting taxicab, the member trips on a small crack in the sidewalk and falls, producing a disabling injury. Depending on all of the facts this may not be misconduct, even though, if sober, the member would not have fallen, since the activity – tripping over a crack in the sidewalk while walking on a sidewalk while intoxicated—may not be grossly negligent.

Scenario 2: The member leaves the party and drives home. On the way, the member has a single car accident by failing to negotiate a turn in the road. No mechanical or traffic-related evidence "explains" the accident. These facts support a finding of misconduct since driving under the influence of alcohol

constitutes the kind of activity that demonstrates a reckless disregard for the consequences. In the absence of direct evidence concerning the precise cause of the accident, driving while under the influence supports an inference that the accident was a result of being drunk. This is a situation where the presumption of not misconduct is rebutted, where proximate causation may be inferred from the circumstances of impairment and conduct, and where a finding of misconduct is based on the degree of impairment coupled with the type activity engaged in.

Scenario 3: In the same fact situation, the member reaches a blood/alcohol level of 0.28. At this level of intoxication, it may be that undertaking virtually any activity constitutes grossly negligent conduct. However, that depends on the member and the specific circumstances. In this case, the fall on the cracked sidewalk might still be not misconduct. Alternately, if the injury occurred while engaging in conduct that may not be unsafe for sober persons, but is obviously hazardous for intoxicated persons a finding of misconduct may be proper. (E.g., a crack in the sidewalk may be readily discerned by a sober person, but not to someone who is "blind drunk"; further, climbing a ladder or going for a midnight swim may not be unsafe for sober persons, but grossly negligent while intoxicated).

Note: The same Administrative Investigation used to determine the LOD/Misconduct issue may also be used for other administrative purposes (*i.e.*, UCMJ prosecution for Disorderly Conduct / Drunkenness or for adverse personnel actions stemming from an alcohol incident). However, as discussed in Article 7.K, above, a LOD/Misconduct Hearing may not be used as a forum to consider adverse disciplinary or personnel actions.

- b. Source of Intoxication. Impairment may be produced by alcohol, a drug, or inhalation of fumes, gas, or vapor. *See*, Articles 9-2-14 and 9-2-15 of U.S. Coast Guard Regulations, COMDTINST M5000.3 (series), and Chapter 20 of the PERSMAN. Voluntary ingestion of certain substances, in contravention of those regulations, may amount to misconduct.
- c. Alcohol and Drug-Induced Disease.
 - (1) A member may accrue lost time because of inability to do military duties for more than 24 hours as a result of intemperate use of alcohol whether or not there is a resulting disease or injury. *See* 10 U.S.C. § 972. However, simple alcohol abuse - in and of itself - is not a disease (or an injury) for the purpose of requiring a LOD determination. Alcoholism, on the other hand, is a separate matter, and should be addressed pursuant to Chapter 20 of the PERSMAN.
 - (2) A LOD determination shall be made when, as a result of diseases secondary to intemperate use of alcohol (e.g., liver disease), controlled substances, or habit-forming drugs, the member is unable to perform his or her duty for more than 24 hours or there is the likelihood of a permanent disability, or the member dies.

3. Medical and Dental Treatment.

- a. Refusal of Treatment. If a medical board convened pursuant to the provisions of the Medical Manual, COMDTINST M6000.1 (series), finds that a member unreasonably refused non life-threatening recommended medical, surgical or dental treatment, any

ensuing death or disability that is caused by that refusal shall be deemed to have been incurred as a result of the member's own misconduct (assuming the presumption of mental responsibility is not rebutted).

- b. Venereal Disease. Any death or disability resulting from venereal disease is not deemed to be due to misconduct, so long as the member has complied with regulations requiring the member to report and receive treatment for such disease.
- c. AIDS. Any death or disability resulting from Acquired Immune Deficiency Syndrome (AIDS) is not deemed to be due to misconduct, if the member has complied with regulations requiring testing, epidemiological assessment, and treatment.

N. DANGEROUS MATERIALS AND AGGRESSIVE CONDUCT

1. Explosives, Firearms, and Dangerous Substances. Unexploded ammunition or other objects, firearms, and highly flammable liquids are inherently dangerous and their handling necessitates a high degree of care. Tampering with, attempting to ignite, or otherwise handling such objects in disregard of inherently dangerous qualities is strong evidence of misconduct.
2. Fights. Wrongful aggression or voluntary participation in a fight or similar encounter, where a member is at least equally at fault with the adversary in starting or continuing the fight, is evidence of misconduct. Additional evidence of misconduct includes provocative actions or language taken or uttered under circumstances where a reasonable person would anticipate retaliation. There is no misconduct if a member is a victim of an unprovoked assault or acts in reasonable defense of self or others. Misconduct may not always be the proximate cause of death, disease, or injury caused by excessive means (e.g., where a fight is underway and an adversary uses excessive means that, under the circumstances, could not reasonably be foreseen; for instance, in an argument amounting to a traffic dispute, a member is shot). However, there can be a causal connection between the misconduct and the injury where a member persists in a fight or other encounter knowing that an adversary has produced a dangerous weapon. The Investigating Officer must determine each case according to its own facts.
3. Motor Vehicle Accidents. Misconduct may occur when a member who knows, or should reasonably know, of his or her unfitness to operate a motor vehicle is injured or dies as the result of driving a motor vehicle. The test for misconduct with respect to a decision to drive is whether a reasonable person, under the circumstances and conditions similar to those under which the member is driving, would or would not have undertaken to drive and whether, having elected to drive, the member's decision amounts to intentional misconduct or willful neglect.
 - a. It may also be misconduct when a member, who is otherwise fit to drive, operates a motor vehicle in an intentionally wrongful or wanton manner.
 - b. Injury incurred while not wearing safety devices such as seat belts or safety helmets is one factor to consider, among many, for misconduct. Notwithstanding regulatory mandates to wear safety device the failure to do so does not automatically result in a determination of misconduct. For example, the investigator should consider whether the lack of the safety device was the proximate cause of the incident or just aggravated injuries.

- c. Other factors to consider in determining if misconduct occurred include:
- (1) Speed of vehicle involved, as evidenced by testimony of witnesses, skid marks, conditions of roads, and the damage to the vehicle.
 - (2) Road factors, including all road characteristics, natural obstructions to the driver's vision, and traffic signs.
 - (3) Other vehicles, including any part played by them in creating the conditions that resulted in the accident.
 - (4) Traffic conditions at the scene of the accident and their effect on the accident.
 - (5) Traffic laws and regulations in force pertinent to the accident, including speed limits and required safety devices.
 - (6) Light and weather conditions and their effect on driving conditions.
 - (7) Mechanical condition of the vehicles involved.
 - (8) Physical condition of the driver or drivers, including sobriety, fatigue, and exhaustion, and the effect of their physical condition on the accident.
 - (9) Mental condition of the drivers and effect of the mental condition of the drivers on the accident.
 - (10) Driving experience of the driver or drivers.
 - (11) Safety devices installed and whether they were being used at the time of the accident.
 - (12) The following information should be provided with respect to passengers:
 - (a) Conduct of passengers and its effect on the driver.
 - (b) Prior relationship of passengers and driver that is relevant to knowledge by any passenger of any impairment of the driver (which may have caused the accident) at the time the passenger entered or had a reasonable opportunity to leave the vehicle.
 - (c) Safety devices installed and whether they were being used at the time of the accident.

4. Participation in Inherently Hazardous Off-Duty Activities. LOD determinations for members participating in inherently hazardous off-duty activities are treated the same way

as any other case. The nature of the activity, its inherent hazards, and the prior training and experience of the member must be considered when determining whether an injury is due to wanton carelessness, willful or gross negligence, and whether it was the proximate cause of the injuries or illness. For example, hang-gliding is dangerous, but not necessarily reckless; whereas, hang-gliding at night in an active storm may well constitute misconduct.

O. INJURIES OR DISEASE OR DEATH OF MEMBERS OF THE TEMPORARY RESERVE, COAST GUARD AUXILIARY, AND CIVILIAN EMPLOYEES

In cases relating to temporary members of the Reserve or members of the Auxiliary, and civilian employees of the U.S. Coast Guard, a LOD/Misconduct determination will not be made. Instead, the investigation shall focus on whether the underlying conduct was incident to service (Reserve) or while under orders of competent military authority (Auxiliary). Similarly, for civilian employees' personal injuries where the Federal Employee Compensation Act (FECA) compensation claims are anticipated, an Administrative Investigation should focus on whether the underlying activity was within the scope of employment.

1. Temporary Members of the Reserve. Under the authority of 14 U.S.C. § 706, the Commandant may enroll as a temporary member of the Reserve a member of the Auxiliary, an officer or member of the crew of a motorboat or yacht placed at the disposal of the Coast Guard, or a person who - by reason of special training and experience - is considered by the Commandant to be qualified for duty. In practice, this authority is *seldom* exercised. One of the most recent and well-known examples of Temporary Reserve status was the appointment of football legend Otto Graham to Captain, USCGR, to fill the position of Athletic Director at the U.S. Coast Guard Academy. In the event, however, that a member of the Temporary Reserve suffers injury or illness, the following information or procedure applies.
 - a. Compensation. If a temporary member of the Reserve is physically injured, or dies as a result of physical injury, and the injury was incurred incident to service while performing active duty, or engaged in authorized travel to or from that duty, the law authorizing compensation for such employees of the United States suffering injuries while in the performance of their duties, applies. *See* 14 U.S.C. § 707.
 - b. Incidental to Service. This term means that the injury arose from the member's relationship with the government. This may be determined by examining the duty status of the member, where and when the injury occurred, and the nature of the activity being performed.
 - c. Standard. The investigation shall focus on whether the injury or death was incurred incident to service while performing active duty, or engaged in authorized travel to or from that duty.
2. Members of the Auxiliary.
 - a. Status. When any member of the Auxiliary is physically injured or dies as a result of physical injury incurred while performing any duty to which he has been assigned by competent Coast Guard authority, such member or his beneficiary shall be entitled to

the same benefits provided for temporary members of the Reserve who suffer physical injury or death resulting from physical injury incurred incident to service. *See* 14 U.S.C. § 832.

- b. Performance of duty. As the term is used in 14 U.S.C. § 832, it may include time engaged in traveling back and forth between the place of assigned duty and the permanent residence of a member of the Auxiliary.
 - c. Standard. The investigation shall focus on whether the Coast Guard Auxiliary member incurred his or her injury while performing a duty to which he or she had been assigned by competent Coast Guard authority. *See* the Coast Guard Auxiliary Manual, COMDTINST M16790.1(series), concerning assignment to duty. There must be a causal connection between the Auxiliarist's injury or death and the duty being performed by the Auxiliarist. This determination is particularly important in situations involving pre-existing medical conditions, such as heart problems.
 - (1) For example, an Auxiliary pilot, who is injured when he crashes his aircraft while under orders for a Search and Rescue (SAR) mission is performing a duty under competent orders at the time of the injury and the causal connection is obvious.
 - (2) On the other hand, an Auxiliary boating instructor who has a heart attack while reading an e-mail from a fellow Flotilla member may not be able to demonstrate a causal connection between the activity and the injury.
 - (3) "Injuries" are defined, below, at Article 7.O.4.
3. Civilian Employees. When any civilian employee is physically injured or dies as a result of physical injury incurred while in a work setting the local command shall contact Commandant (CG-121) and the servicing civilian personnel office for additional instructions, beyond the general guidance contained in this manual. The United States Department of Labor (DOL) administers the Federal Employee Compensation Act (FECA) and has promulgated its own regulations, policies, forms, and manuals, which are beyond the scope of this manual.
4. Injury. For any investigation convened under Article 7.O of this manual, the term "injury" includes, in addition to injury by accident, a disease proximately caused by the employment, and damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired; except that eyeglasses and hearing aids would not be replaced, repaired, or otherwise compensated for, unless the damages or destruction is incident to a personal injury requiring medical services. *See* 5 U.S.C. § 8101.
5. Misconduct/Intoxication.
- a. Under the provisions of 5 U.S.C. § 8102, compensation shall not be paid to the member of the Temporary Reserve or the Coast Guard Auxiliary, or to civilian employees if the

injury or death sustained is:

- (1) Caused by his or her willful misconduct;
 - (2) Caused by the his or her intention to bring about the injury or death of himself/herself or of another; or
 - (3) Proximately caused by his or her intoxication.
- b. Any pertinent information concerning such potentially claim-barring causes shall be included in the investigation. The DOL is the final decision-making authority on Auxiliarist's injury or death claims and on all claims by civilian employees under the FECA. The Coast Guard's Final Action Authority shall forward a copy of such investigations to DOL with the Coast Guard's recommendations for resolving the claim.

P. SPECIFIC CONSIDERATIONS IN DEATH CASES

1. When Investigations of Death Cases are Required.

- a. Preliminary Inquiry. A preliminary inquiry should, as in any other circumstance potentially warranting an investigation, be conducted into the death of a member of the Coast Guard or into the death of a civilian aboard a place under Coast Guard control. At the conclusion of the preliminary inquiry, the Convening Authority must determine what type of investigation, if any, is required. Normally, a Standard Investigation will be appropriate to inquire into a death case that warrants investigation.
- b. LOD Determinations. As noted throughout this Chapter, LOD determinations are required in cases where members die on active duty. Such LOD determinations typically require an Administrative Investigation. As a result of such investigation, misconduct may be attributed to a deceased member as with living members, and the Convening Authority or reviewing authorities may enter any such opinions regarding deceased members. The Final Action Authority shall reach and document one of the three conclusions enumerated in Article 7.F.3 (LOD and Not Misconduct; Not LOD but Not Due to Misconduct; or Not LOD Due to Misconduct). If such an opinion was recorded inadvertently prior to decision by the Final Action Authority, or prematurely recorded after the injury but before death occurred, the investigation need not be returned for correction. The Convening Authority or reviewing authorities need only to note the error and its lack of utility in the forwarding endorsement or Final Action, as appropriate.
- c. No Further Investigation Required. As noted in Article 7.H.2, an investigation under this manual will normally not be conducted if the preliminary inquiry shows that the death was: (1) the result of enemy action; (2) unquestionably in the LOD, without any evidence of potential misconduct; or (3) a previously known medical condition and the adequacy of military medical care is not reasonably in issue. *But see* Article 7.P.1.d.(4), below.
- d. Investigation Required. Due to the complexity and sensitivity of death investigations, such matters shall be referred to CGIS prior to initiation of any "in-house" Administrative Investigation. *See* Article 7.P.2 below. CGIS shall determine whether to pursue the investigation alone, in conjunction with an Administrative Investigation,

or to refrain from investigating the matter, resulting in an Administrative Investigation alone. Whether conducted *by* CGIS, *with* CGIS, or by an administrative investigating body *alone*, the following types of cases shall be investigated, when:

- (1) A person (whether a Coast Guard employee, dependent, or not) is found dead on a Coast Guard installation and the death was from other than natural causes, or the presence of the body is not readily explained, or if the death appears related to Coast Guard activities (including medical treatment);
 - (2) A probable nexus exists between the USCG, and the circumstances of the death of a person;
 - (3) The circumstances surrounding the death place the adequacy of military medical care reasonably at issue; or
 - (4) There are peculiar circumstances surrounding a casualty from a hostile action, such as when it is unclear if enemy action actually caused the death. Because a number of commercial life insurance policies contain certain restrictions and/or certain types of double indemnity provisions, it is desirable to ensure that the essential facts are recorded while witnesses are known and available. To the extent feasible, the investigation should determine whether death resulted from accidental causes, natural causes, or enemy action, within or without a combat zone.
- e. Limited Investigation. If the preliminary inquiry shows that the death of a Coast Guard member occurred at a location in the United States but not under military control, while the member was off-duty, and the circumstances of the death had no discernable nexus to the member's Coast Guard service, the command shall obtain the results of the investigation of the incident by civilian authorities. The results of this limited (Coast Guard) investigation may be transmitted in an abbreviated report. The command conducting the limited investigation shall maintain the results obtained from the civilian authorities as internal reports of those authorities while needed, referring external requests for such information to the furnishing agency. The command will return the record to the furnishing agency when it is no longer needed, summarizing the key information and keeping careful record of file numbers and point of contact information of the furnishing agency. Restrictions and prohibitions of the furnishing agency, with respect to photocopying and redistribution of such materials shall be strictly followed.
2. CGIS Reporting Requirement. Per Mandatory Reporting of Incidents to the Coast Guard Investigative Service and Requesting Investigative Assistance, COMDTINST 5520.5 (series), CGIS must be notified upon the reported death of a "covered person" or any person under the command, control or custody of the Coast Guard at the time of death. A "covered person" is defined as active duty Coast Guard personnel, Reserve Coast Guard personnel on active duty, Civilian Coast Guard employees, Public Health Service personnel assigned to the Coast Guard, and DoD personnel assigned to the Coast Guard. The exception to this notification requirement are deaths in a hospital setting due to known natural causes, such as terminal illness, and those deaths that occur in the performance of official duties for which a Mishap Analysis Board is convened under the Safety and Environmental Health Manual, COMDTINST M5100.47.

3. Independent Review.

- a. Purpose. To enhance the Administrative Investigation review process, prior to taking action on an Investigative Report which calls into question the propriety of a deceased individual's conduct (including all apparent suicide cases), the Convening Authority may ask an individual not previously connected with the investigation process and outside the Convening Authority's immediate chain-of-command to review the report and its endorsements.
- b. Qualifications of Independent Reviewer. The individual selected pursuant to this section to review the preliminary report should, to the extent feasible, possess such training, experience, and background that he or she can critically analyze the salient circumstances surrounding the death as documented in the report. For example, if a pilot's death occurred as the result of an aircraft accident, then the individual selected should be a pilot.
- c. Duties of Independent Reviewer. The individual selected to review the Investigative Report shall not act as the deceased's Representative, but should critically analyze the Investigative Report from the perspective of the deceased, tempered by the reviewer's own experience, training, and education. The review shall be completed within ten working days of delivery of the report to the reviewer. If, after conducting the review, the reviewer believes comment on the thoroughness of the investigation or the accuracy of its findings is warranted, then such comments shall be provided in writing to the Convening Authority.
- d. Action. The Convening Authority shall consider such comments as the reviewer may make and take such actions as the Convening Authority deems warranted. The reviewer's comments, if any, shall be appended to the Investigative Report.

4. Standard of Proof. To sustain a conclusion that the intentional and improper acts of a deceased Coast Guard member may have caused harm or loss of life, including the member's own, that conclusion must be established by clear and convincing evidence. Otherwise, the presumption that a deceased Coast Guard member acted properly (in the LOD without Misconduct) will not be disturbed.

5. Report Contents.

- a. The circumstances surrounding the death of Coast Guard members, or of civilian personnel at places under Coast Guard control, are likely to be recorded in a variety of ways, such as autopsy reports or battlefield reports, and medical reports. Investigations conducted pursuant to this manual that also focus on such deaths may incorporate other such official reports as exhibits, as needed.
- b. Pursuant to 10 U.S.C. § 113 note (Pub. L. 102-484, Div. A, Title X, § 1072, October 23, 1992; 106 Stat. 2508), fatality reports and records pertaining to any member of the Armed Forces who dies in the LOD shall, generally, be made available to family members of the service member. For this reason, discretion must be exercised in enclosing graphic photographs since doing so has significant potential for shocking the sensitivities of relatives and others to whom the investigation may ultimately be released. Such materials should be separately enclosed in an envelope marked:

“CAUTION. THIS ENVELOPE CONTAINS GRAPHIC PHOTOGRAPHS. VIEWER DISCRETION WARRANTED.”

- c. Law enforcement and medical examiner records obtained from other agencies are typically “close hold” documents that may neither be permanently retained nor even copied or disseminated (even to immediate family of the deceased). *See* Article 7.P.1.e. In such cases the Coast Guard legal servicing office or CGIS, in consultation with the legal servicing office, shall maintain the records obtained from the civilian law enforcement authorities as internal reports of those authorities while needed, referring external requests for such information to the furnishing agency. The Coast Guard will return such record to the furnishing agency as soon as it is no longer needed, rather than retaining the record (or copies thereof) in the permanent files of the Coast Guard.
6. Timely Submission of Reports. Completion of a death investigation and its forwarding shall not be delayed to await final autopsy reports, autopsy protocols, death certificates, or similar documents unless their inclusion is absolutely essential to resolving issues central to the Investigative Report. The unavailability of such documents should be noted in the preliminary statement, along with an estimate of anticipated delivery. Documents subsequently obtained shall be forwarded by separate correspondence via the review chain, with appropriate reference to the initial submission of the Investigative Report.

Exhibit (7-A-1)

5830 (page 1 of 4)

From: Commanding Officer, [Unit]
To: [Name], USCG
Subj: NOTIFICATION OF RIGHT TO LINE OF DUTY / MISCONDUCT INFORMAL
HEARING - MEMBER

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1(series),
Chapter 7
(b) Factual excerpts from Administrative Investigation Report dtd

1. This is to inform you that questions have arisen concerning the circumstances in which you [describe injury/disease, date and location incurred] and I will make a line of duty and misconduct determination concerning the injury pursuant to reference (a).
2. Before I make that determination, I will afford you an informal hearing to present any information you wish me to consider on the issue of a potential adverse not in the line of duty or misconduct finding. In lieu of an in-person hearing, you may present any written materials you would like for me to consider. In either case, you may examine reference (b) and any other materials that I may consider in reaching my finding. During the hearing you may introduce any other evidentiary matter before me as well as present any relevant matter in refutation, explanation, or rebuttal regarding the incurrence of the injury/disease.
3. This informal hearing is *administrative* rather than disciplinary in nature and is not non-judicial punishment under Article 15, Uniform Code of Military Justice (UCMJ). However, the results of this hearing do not preclude me from separately taking disciplinary action against you, if warranted. [When member is suspected of an offense, include the following:] Based on reference (b), you are suspected of committing an offense connected with sustaining the injury on [date], specifically violation of Article ##, UCMJ, in that you [describe alleged offense]. Accordingly, you have the following rights under Article 31(b), UCMJ:
 - a. You have the right to remain silent and not make any statement at all.
 - b. Before you decide whether or not you want to make a statement, you may consult with a lawyer.
 - c. If you decide to consult with a lawyer, the government will not question you. You may consult with a civilian lawyer, at your own expense, or a military lawyer without cost to you if the government intends to continue questioning you.
 - d. If you decide to make a statement, anything you say may be used as evidence against you in any court-martial, non-judicial proceeding, administrative proceeding or civilian court.

- e. If the questioning continues you may stop it at any time by refusing to make further statements or by requesting to consult with a lawyer.
 - f. You have the right to have a retained civilian lawyer, an appointed military lawyer, or both present during any questioning. However, the Government is not required to question you, simply because you have counsel, or wish to be questioned.
4. Pursuant to 10 U.S.C. § 1219, you have the right not to sign any statements relating to the origin, incurrence, or aggravation of a disease or injury that you may have.
 5. [If applicable] Based on a review of reference (b), I find that your injury might result in entitlement to disability benefits. Therefore, you have the right to be represented during the proceedings by civilian counsel, at your own expense, or by military counsel provided by the government at no expense to you.
 6. You must acknowledge receipt of this notification within ten calendar days, indicating whether you desire an informal hearing [if applicable, add following] and, if so, whether you desire to be represented by military counsel at the hearing. You have the right to consult with military counsel prior to making this decision, and I encourage you to exercise that right regarding this important matter. If you elect to consult with military counsel, I will arrange for a consultation appointment, and the ten-day period will run from the date of that appointment. If you decline to consult with military counsel, the ten-day period will run from the date you receive this notification.

#

Encl: (1) Exercise of Rights Form
(2) Privacy Act Form

ACKNOWLEDGEMENT & ELECTION

I have read and understand the above notifications.

I understand that an adverse determination (not in the line of duty, or due to misconduct, or both) may negatively impact my entitlement to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extension of enlistment, date of expiration of active obligated service, and accrual of annual leave.

I understand that prior to such determination I have the right to an informal hearing before the Commanding Officer and a right to be represented by military counsel at no expense to me at that hearing.

I understand that I have the right to consult with a military counsel prior to making my decision as to whether to request a hearing.

I understand my rights under Article 31(b), UCMJ and 10 U.S.C. § 1219.

(Circle one): I (request)(decline) an opportunity to consult with military counsel regarding my decision to request an informal hearing.

Signature

Date

**RIGHT TO MISCONDUCT AND LINE OF DUTY INFORMAL HEARING:
EXERCISE OF RIGHTS**

From: [Name], USCG
To: Commanding Officer, [Unit]
Subj: RIGHT TO LINE OF DUTY AND MISCONDUCT INFORMAL HEARING

Ref: (a) Your ltr 5830 of [date].
(b) Administrative Investigations Manual, COMDTINST M5830.1, chapter 7

1. Consultation with Counsel regarding reference (a) (initial and complete one)

_____ I consulted with _____ (name) of _____
(command), a military lawyer, on _____ (date of consultation)

— OR —

_____ I waive my right to consult with a military lawyer.

2. Informal Hearing (initial and complete one)

_____ I request an informal hearing. — OR —

_____ I elect to present written materials in lieu of a hearing. — OR —

_____ I waive unconditionally my right to an informal hearing.

3. Representation by Military Counsel (initial and complete one, if notification letter indicates that you are entitled to representation)

_____ I request to be represented by military counsel, at no expense to me.

— OR —

_____ I decline to be represented by detailed military counsel.

Signature: Date:

For Command Use:

Informal hearing held on _____ (date) at _____
(location).

Written materials received on _____ (date), and have been appended to the
investigation.

Commanding Officer

Date

Exhibit (7-A-2)

5830

Spouse of Deceased Member
C/O Representative of Spouse of Deceased Member
Address
City, State Zip-Code

Re: NOTIFICATION OF RIGHT TO LINE OF DUTY / MISCONDUCT
INFORMAL HEARING - SPOUSE

This is to inform you that questions have arisen concerning whether the death of your spouse was in the line of duty or due to misconduct and that I am required to make a line of duty and misconduct determination pursuant to the Coast Guard Administrative Investigations Manual (AIM), COMDTINST M5830.1(series), Chapter 7, which I've attached. In case you have not already received a factual summary of the matter, I am attaching the factual material that I will be considering in making that determination.

Before I make that determination, however, I will afford you an informal hearing opportunity for you to present any information that you wish me to consider on the issue of a potential adverse misconduct or not in the line of duty finding. In lieu of an in-person hearing, you may present any written materials you would like for me to consider. In either case, you may examine the factual information presented in the Administrative Investigation dated [DDMONYEAR] and any other information that I may consider in making my determination.

This informal hearing will be *administrative* in nature. Please understand that you are not required to make any statement or to present any evidence at all. However, I must inform you that should I determine that your spouse's death did not occur in line of duty or was due to misconduct, that adverse determination may bar all or part of any surviving spouse benefit plan annuity to which you otherwise may have been entitled. Accordingly, you may wish to participate, directly or indirectly through a Representative, in this informal hearing. You have the right to be represented during the proceedings by civilian counsel, at your own expense. Before you decide whether or not you want to make a statement, or submit evidence, you may consult with a civilian lawyer, at your own expense. You may also consult with the Coast Guard decedent affairs representative, who will be able to explain the nature of the proceeding and types of benefit issues involved, in the context of the your spouse's death. If you decide to make a statement, directly or through your Representative, anything you say may be used as evidence in the administrative proceeding in making a line of duty or misconduct determination. Again, you do not have to make any statement or sign any document pertaining to this matter, other than acknowledgement of this letter and an expression of your preference for an oral hearing, written hearing, or no hearing at all.

You must acknowledge receipt of this notification within ten calendar days, indicating whether you desire an informal hearing.

COMDTINST M5830.1A

//SIGNATURE//
Title
Rank
U. S. Coast Guard

Encl: (1) AIM, Chapter 7

(2) Factual excerpts of the Administrative Investigation dtd DDMONYEAR

(3) Exercise of Rights Form

(4) Privacy Act Form

**RIGHT TO MISCONDUCT AND LINE OF DUTY INFORMAL HEARING:
EXERCISE OF RIGHTS**

From: **Surviving Spouse or Representative for Surviving Spouse**
To: Commanding Officer, [Unit]
Re: RIGHT TO LINE OF DUTY AND MISCONDUCT INFORMAL HEARING

In response to your ltr 5830 of [date] and pursuant to the Administrative Investigations Manual, COMDTINST M5830.1, chapter 7, I make the following declaration:

I understand that an adverse determination (not in the line of duty, or due to misconduct, or both) may negatively impact my entitlement to survivor's benefits.

I understand that prior to such determination I have the right to an informal hearing before the Convening Authority, [Name, Title, and Rank of officer signing the notification letter].

With Regards to the Informal Hearing (initial one)

- I request an informal hearing. -OR-
- I elect to present written materials only, in lieu of a hearing. -OR-
- I waive unconditionally my right to an informal hearing

Signature: Date:

(Circle one): (Surviving Spouse)(Representative)

For Command Use:

Informal hearing held on _____ (date) at _____
(location).

Written materials received on _____ (date), and have been appended to the investigation.

Commanding Officer

Date

Exhibit (7-B)

GUIDE FOR LOD / MISCONDUCT INVESTIGATING OFFICERS

- I. Purpose of Investigation.** The purpose of an LOD investigation is to protect the interests of the member (or surviving spouse) and to ensure the Government awards benefits properly. It is primarily a fact-finding process. The report of investigation includes all information needed to evaluate the disability claims and other issues related to the death, disease, or injury that may have occurred or may arise many years later. The LOD and misconduct investigation is separate and distinct from judicial processes or other disciplinary action. Adverse findings are **not** vehicles for imposing punishment or as means of enforcing good order and discipline.
- II. Preliminary Preparation:** Read Chapter 7 with particular attention to those parts that have specific application to the investigation. Investigating Officers must consult with legal counsel before starting the investigation and as often as necessary. When it appears that a line of duty / misconduct determination will be required, this guide should be used in addition to the generic guide provided as Exhibit 7-E to this manual.
- III. Conducting the Investigation:** The investigating officer is responsible for:
- A. Determining duty status according to the following guidelines:
1. Generally:
 - a. A death, disease or injury of a member, incurred while a member is absent without authority, is "not in line of duty". It does not matter whether the disease or injury was or was not the result of the member's misconduct.
 - b. For the definition of the term "unauthorized absence," *see* Article 7-F-2.c.
 - c. Unless there is compelling evidence to the contrary, you may rely on the immediate commander's determination that the member was "present for duty" or was "absent **with** authority."
 - d. Inquire further into the facts and circumstances of the member's duty status when the immediate commander indicates that the member was "absent without authority," or where there is evidence to indicate that the commander's determination that the member was "present for duty" or "was absent with authority" is incorrect.
 - e. Documentation in these instances may be in the form of orders, records of duty status changes, incident reports, statements of witnesses, or other evidence that clarifies the member's status at the time of the incident.
 2. For members who, while traveling to or from duty or training, die or incur a disease or injury:

- a. Document the member's status in relation to the duty or training undertaken. Copies of relevant orders are essential.
 - b. Document the hour the member was scheduled to start duty or training, or the hour they completed duty or training, the method of travel, the shortest route between the place of duty or training, and the place where the member commenced travel to start duty or the place where the member was returning after completing duty or training. Use maps or diagrams. Document the time and place the disease or injury occurred and any other facts relevant to the question of whether the member, at the time the death, disease or injury occurred, was on the "authorized" route to or from duty or training at a time when he or she would have been normally expected to be traveling.
- B. Determining whether the proximate cause of the member's death, disease or injury involved misconduct. (For explanations of the terms "misconduct" and "proximate cause," see 7-F-2.b.)
1. To do this, get the facts by:
 - a. Interviewing witnesses, including the member, as able, affording Art. 31 Rights, as needed.
 - b. Getting copies of military police reports; Coast Guard Investigative Service (CGIS) reports; hospitalization or clinical records; blood, breath, urine, or tissue tests; and photographs.
 - c. Getting copies of civilian police reports, if any. Generally, civilian police reports involving traffic investigations are available from the civilian agency involved. In some states, civilian police reports involving criminal investigations are not directly available. In any case where there are problems in getting civilian police reports, contact the local CGIS office for help in getting copies of these reports or an extract or summary of them.
 - d. Preparing maps, charts, diagrams, or other exhibits that might be helpful to an understanding of the incident.
 - e. Getting evidence regarding the mental responsibility of the member. Obtain a copy of the psychiatric evaluation and include it in the investigative file. If there has been no psychiatric evaluation and one is necessary, have the member's commander or the Convening Authority to request one and get a copy for the file.
 - f. Covering any other matters deemed relevant.
 2. Organize the facts to answer the issues raised in the Convening Order's tasking.
- C. Interviewing Witnesses.

Interview all witnesses who have knowledge of the matter under investigation. Interview

the subject of the investigation in all cases except where precluded by medical necessity. If witnesses other than the subject are not available for personal interview, get copies of available sworn or unsworn statements made by those witnesses to other investigators. If no such statements are available, arrange, where possible, for others to take their statements.

1. You do not have to advise civilian witnesses, or military witnesses not suspected of committing an offense, of their Article 31 (Miranda/Tempia) self-incrimination protection rights.
2. Advise a military witness of his or her rights under Article 31, Uniform Code of Military Justice (UCMJ) when you suspect the commission of an offense. Consult with the servicing legal office on the need for and specific requirements of such advice and use the Military Justice Manual form provided as Exhibit (4-B) to this manual.
3. Advise the subject of the LOD/Misconduct investigation before questioning:
 - a. Advise the member of 10 U.S.C. § 1219 which states: "A member of an armed force may not be required to sign a statement relating to the origin, incidence, or aggravation of a disease or injury that he has. Any such statement against (his)(her) interests, signed by a member, is invalid."
 - b. Advise the member of his or her rights under Article 31: UCMJ, if you suspect he or she committed an offense. *See*, Exhibit (4-B) to this Manual.
 - c. Advise the member that, to the extent of Federal Law and Regulations, his or her Privacy and Access to records about him or her, will be honored. For the surviving spouse or Representative, advise that although the privacy interests of a deceased person are substantially reduced, the Coast Guard will comply with the law and regulations.
 - d. Exhibit (7-A) to this Manual may be used to advise the suspect of the disclosure rights addressed above in the paragraph directly above (3.c.) and to obtain the subject's statement (or that of the surviving spouse or Representative), if able.
4. Advise all witnesses asked to supply personal information in an LOD investigation of relevant provisions of the Privacy Act (5 U.S.C. § 552a(c)(3)). Include the Privacy Act statement on the form used to collect all witnesses' statements.
5. If the member under investigation has been transferred from the place where the investigation is held, request the member's new commander or, if applicable, the hospital commander where the member is hospitalized, get a statement and forward it for inclusion in the report of investigation.
6. In any event, the report of investigation must contain the sworn statement of the subject of the investigation or an explanation of the efforts made to get it and the reasons why you could not obtain it.

7. If a witness, including the subject, provides relevant information but declines to or cannot sign a written statement, then prepare a written summary of the information provided orally. Include the summary in the investigative file with an explanation of the reason for it.

IV. Checklist for Contents of the LOD/Misconduct Administrative Investigation: The following is a checklist of matters which should be included (as applicable) in any investigative report concerning LOD/misconduct:

- A. The complete name, grade or title, service number, social security number, service or occupation, station or residence of the member.
- B. All facts leading up to and connected with an injury or disease.
- C. Copies of military or civilian police accident reports, pertinent hospitalization or clinical records and pathological, histological and toxicological studies.
- D. Complete information concerning the site and terrain at which the incident in question occurred, and photographs, charts, diagrams, or other exhibits that may be deemed helpful to a complete understanding of the incident.
- E. All pertinent facts with respect to the duty, leave, liberty or unauthorized absence status of an individual at the time of the incident resulting in injury or illness.
- F. When the person involved is a member of the Coast Guard Reserve, complete information as to the member's status on active duty for training or inactive duty etc, (or travel to and from such duty) at the time of the incident.
- G. Complete information as to the nature and extent of death, disease or injury to Coast Guard personnel and the place and extent of any hospitalization resulting there from. Obtain costs when available if third party liability is possible and for treatment at civilian hospitals in every case.
- H. When relevant, evidence regarding the state of alcohol, drug, fumes, gas, or vapor intoxication and the extent of impairment of the physical or mental faculties of any person involved and connected with the incident. Evidence as to the individual's general appearance and behavior, rationality of speech, coordination of muscular effort, and all other facts, observations, and opinions of others bearing on the question of actual impairment shall be obtained and recorded. Determine the quantity and nature of the intoxicating agent used and the period of time over which used by the person. Results of any blood, breath, urine, or tissue tests for the intoxicating agent should be obtained and submitted as exhibits.
- I. When material, evidence regarding the mental competence or impairment of the injured person. In all cases of apparent suicide or attempted suicide, all possible evidence bearing on the mental condition of the person shall be obtained. This will include all available evidence as to social background, actions, and moods immediately prior to the suicide

attempt, any troubles which might have motivated the incident, and pertinent examination or counseling by specially experienced persons.

- J. Documentation that statements solicited from an injured service member (or surviving spouse or Representative) respecting the occurrence or aggravation of the death, disease or injury are in compliance with the provisions of this manual.
- K. Documentation of any mechanical failures or failure of or lack of safety equipment that may have contributed to the injury or disease.
- L. The evidence should be sufficient to support each and every element forming the basis for any determination of not in the line of duty or due to own misconduct.

Exhibit (7-C-1)

Member Sample Privacy Act Statement—LOD/Misconduct

STATEMENT (see note 1)

I, _____ (name) _____, (grade) _____, _____ (organization) _____, am aware that I may submit a sworn statement in connection with this investigation concerning my _____ (specify what the disease or injury is) _____. I have been advised that Title 10 U.S.C. §1219 provides as follows:

"A member of an armed force may not be required to sign a statement relating to the origin, incidence, or aggravation of a disease or injury that (he)(she) has. Any such statement against (his)(her) interest, signed by a member, is invalid." I understand that I cannot be required to sign any such statement but that if I willingly do so it may be considered in determining my line of duty and misconduct status. (I have also been advised of my rights under Article 31: UCMJ (see note 2).) I make and sign the following sworn statement voluntarily and with this understanding:

(body of statement)

(signature of member) (date) _____
Subscribed and sworn to before me this _____ day of _____, 20_____.

(signature of person administering the oath (see note 3))

AUTHORITY: 5 U.S.C. §§ 301, 2108, and 3309-3315; 10 U.S.C. §§ 507, 972, 1074, and 1201-1221; 14 U.S.C. §§ 93(a)(17) and 632; 37 U.S.C. §§ 204, 403, and 802; 38 U.S.C. §§ 1110, 1131, 1710 and 1712; as well as EO 9397.

PURPOSE: Information provided is used by processing authorities in determining whether you were or were not acting in line of duty and whether your illness or injury were the results of your own (mis)conduct. Any information that you provide may be considered in that process. The information collected will be filed in your master personnel record and you will be given a copy as well. If you are represented by counsel, your attorney will be given a copy as well.

ROUTINE USES: NONE.

DISCLOSURE IS VOLUNTARY: If information is not provided, the Coast Guard will complete processing using information that is available. You are advised that you are initially presumed to be entitled to have certain pay and/or benefit entitlement determinations resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination **only if** the record does not contain sufficient evidence to overcome any presumptions in your favor. **But if** the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation reaching a favorable determination. Therefore, it may be in your interest to provide additional information. But the choice is yours.

NOTES:

1. Include the Privacy Act statement on the form used to collect the witness statement.
2. Omit if military member is not suspected committing of an offense.
3. The investigating officer, any other person authorized by 14 U.S.C. § 636 (or 10 U.S.C. § 936), or a notary public, may administer the oath. Enter the typed or printed name, grade, and organization or, if a notary, the notary's identification under the signature block.

Exhibit 7-C-2

Surviving Spouse/Representative Sample Privacy Act Statement—LOD/Misconduct

STATEMENT (see note 1)

I, _____ (name) _____, the surviving spouse of, _____ (name) _____, _____ (grade) _____, _____ (organization) _____, am aware that I may submit a sworn statement in connection with this investigation concerning the death, disease or injury to my former spouse. I understand that neither my Representative nor I can be required to sign any such statement but that if either my Representative or I willingly do so, it may be considered in determining the line of duty and misconduct status for my former spouse.

I make and sign the following sworn statement voluntarily and with this understanding:

(body of statement)

(signature of surviving spouse)

(date)

--OR--

(signature of surviving spouse's Representative)

((date)

Subscribed and sworn to before me this _____ day of _____, 20 _____.

(signature of person administering the oath (see note 2))

AUTHORITY: 5 U.S.C. §§ 301, 2108, and 3309-3315; 10 U.S.C. §§ 507, 972, 1074, and 1201-1221; 14 U.S.C. §§ 93® and 632; 37 U.S.C. §§ 204, 403, and 802; 38 U.S.C. §§ 1110, 1131, 1710 and 1712; as well as EO 9397.

PURPOSE: Information provided is used by processing authorities in determining whether your former spouse was or was not acting in line of duty and whether (his)(her) death, illness or injury were the results of (his)(her) own misconduct. Any information that you provide may be considered in that process. The information collected will be filed in your former spouse's master personnel record and you will be given a copy as well. If you are represented by another person, your Representative will be given a copy as well.

ROUTINE USES: NONE.

DISCLOSURE IS VOLUNTARY: If information is not provided, the Coast Guard will complete processing using information that is available. You are advised that you are initially presumed to be entitled to have certain pay and/or benefit entitlement determinations resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination **only if** the record does not contain sufficient evidence to overcome any such presumptions in your favor. **But if** the completed record does contain sufficient evidence to overcome such presumptions in your favor, however, your election not to provide the requested

COMDTINST M5830.1A

information possibly could preclude the decision maker from reaching a favorable determination. Therefore, it may be in your interest to provide additional information. But the choice is yours.

NOTES:

1. Include the Privacy Act statement on the form used to collect the witness statement.
2. The investigating officer, any other person authorized by 14 U.S.C. § 636 (or 10 U.S.C. § 936), or a notary public, may administer the oath. Enter the typed or printed name, grade, and organization or, if a notary, the notary's identification under the signature block.

Exhibit (7-D-1)

FLOWCHART FOLLOWING INITIAL DETERMINATION OF MISCONDUCT OR NOT IN LINE OF DUTY

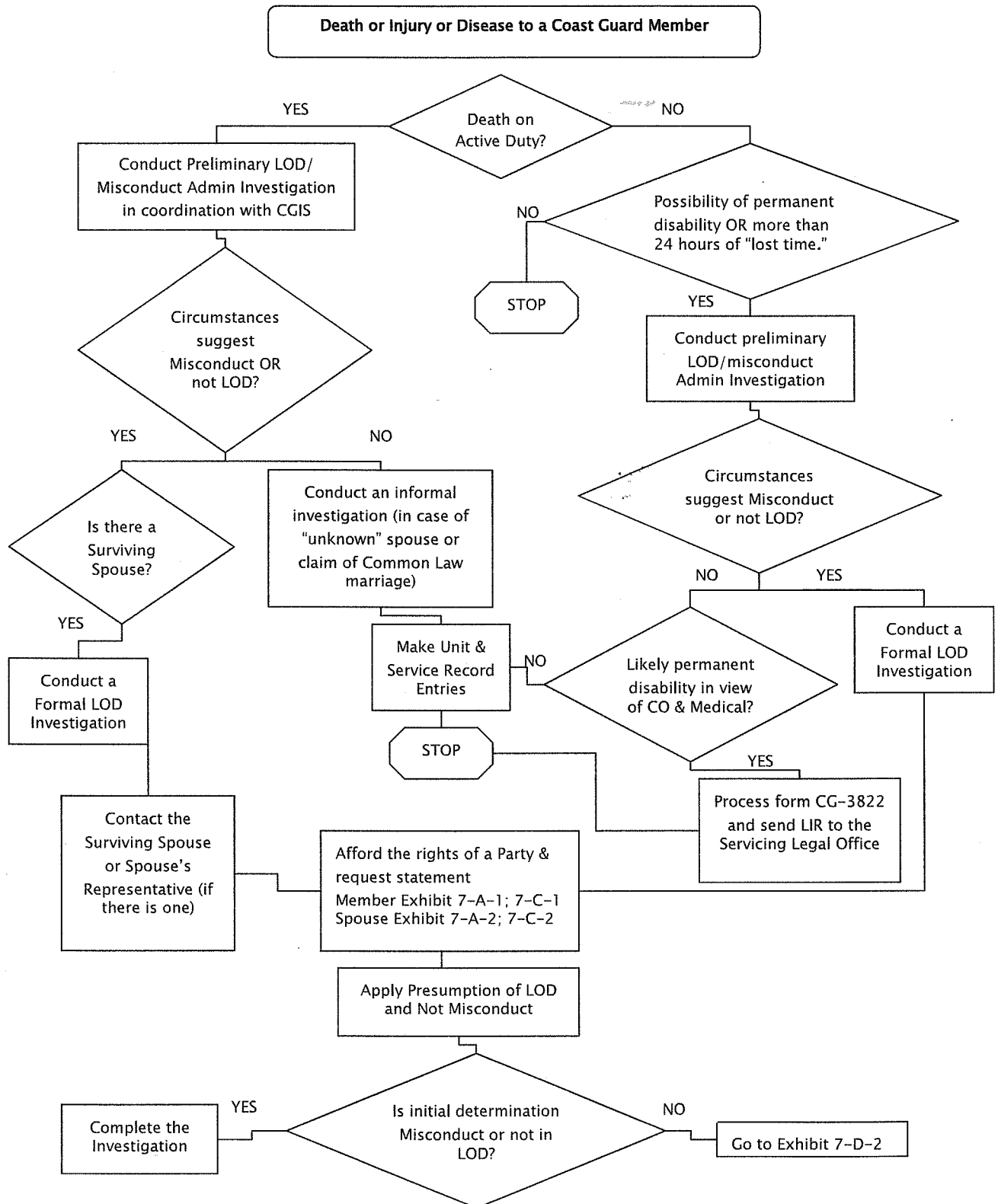


Exhibit (7-D-2)

FLOWCHART FOLLOWING INITIAL DETERMINATION OF IN LINE OF DUTY

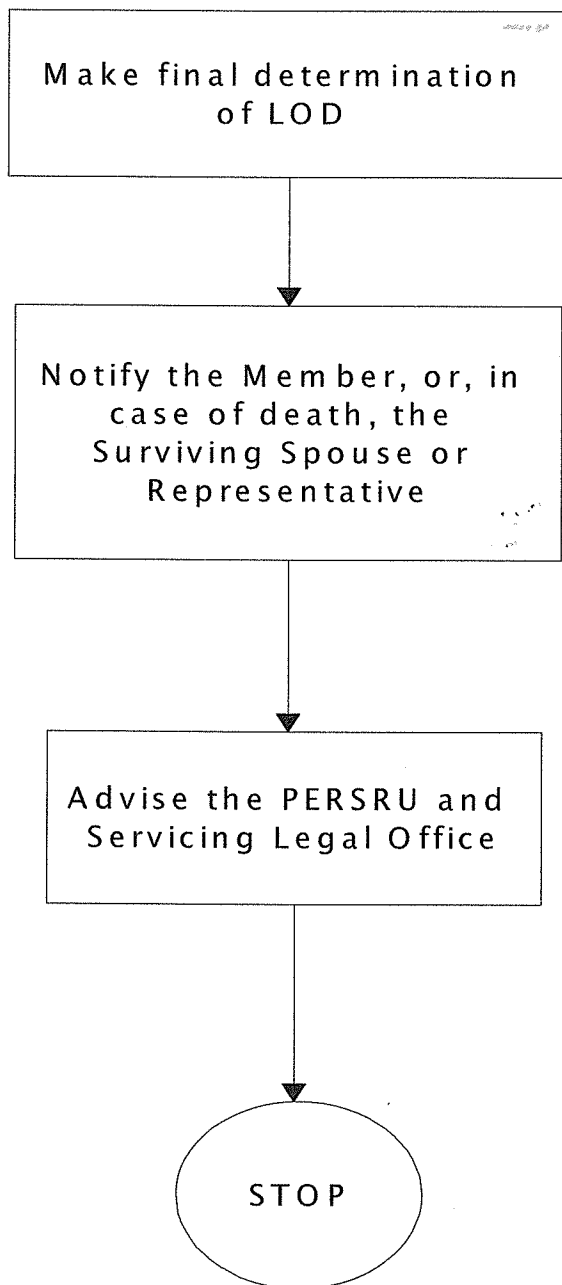


Exhibit (7-E)**DEATH OR INJURY TO A COAST GUARD MEMBER - CHECKLIST**

1. The following checklist is intended as a guide to assist Investigating Officers in preparing legally sufficient death or injury investigations. It is not intended to rigidly structure an investigation, but is intended to ensure thoroughness and to backstop the Investigating Officer, as necessary. This guide is designed for use in every injury to Coast Guard members. If it becomes apparent that a line of duty/misconduct determination is appropriate, the guide provided as Exhibit 7-B should also be consulted.
 - a. Facts. NOTE: Each fact must be supported by evidence included and referenced as an Exhibit.
 - _____ (1) If CGIS investigated death incident, obtain relevant information from CGIS Report of Investigation.
 - _____ (2) Complete description of site or incident given.
 - _____ (3) Complete description of events leading up to incident given.
 - _____ (4) Accurate description of incident provided.
 - _____ (5) Vehicles, equipment, weapons, etc., involved described.
 - _____ (6) Pertinent regulations and instructions cited. NOTE: Unless the particular regulation or instruction expressly covers the incident, (i.e. "Coast Guard Regulations, Article . . . states that . . . [quote]"), then the applicability of the particular regulation or instruction is actually an opinion and should be stated as such.
 - _____ (7) Persons involved identified. Make a special effort to identify and obtain point of contact information for next of kin.
 - _____ (8) Any signs of intoxication or drug use noted. NOTE: That a sailor was observed stumbling and slurring words is a fact; that he or she blew 0.09 on an intoximeter is a fact; that a shipmate said that the sailor was "high" is also a fact; however, the Investigating Officer's determination that the sailor was intoxicated is an opinion and should be cited as such.
 - _____ (9) Experience of persons with particular equipment, *etc.*, noted.
 - _____ (10) Driving experience of parties noted (if appropriate).
 - _____ (11) Unsafe practices by parties involved noted.
 - _____ (12) Injuries described.
 - _____ (13) Cause of death, injury, or illness stated. NOTE: A qualified medical expert's opinion may be reported as a fact; the Investigating Officer's conclusion, however, is an opinion and should be cited as such.
 - _____ (14) Statutes, ordinances, or regulations violated noted. NOTE: A police officer's or court's determination may be reported as a fact; the Investigating Officer's conclusion, however, is an opinion and should be cited as such.
 - _____ (15) Any traffic citations listed.
 - _____ (16) Use of seatbelts and other personal safety equipment discussed.
 - b. Opinions. NOTE: Each opinion must refer to the supporting Findings of Fact.

- _____ (1) Whether the proper degree of care exercised by personnel involved. NOTE: In cases involving known or likely claims by for against the Government, Investigating Officers must NOT render ultimate opinions as to the Government's liability or responsibility for an incident.
- _____ (2) Whether equipment, etc., involved was properly maintained.
- _____ (3) Whether such maintenance contributed to incident.
- _____ (4) Whether regulations, instructions regarding equipment, etc., were followed.
- _____ (5) Cause of incident.
- _____ (6) Fault attributed to personnel involved.
- _____ (7) LOD/Misconduct determination needed (*See Exhibit 7-B*).

c. Recommendations. NOTE: Each recommendation must be supported by evidence included and referenced as an Exhibit, and should also refer to supporting Opinions, which, in turn, refer to supporting Findings of Fact.

- _____ (1) Regarding personnel training and staffing.
- _____ (2) Regarding equipment, infrastructure and maintenance.
- _____ (3) Regarding sufficiency of instructions, regulations.
- _____ (4) Regarding improved procedures.
- _____ (5) Regarding disciplinary action or commendation.

NOTE: As with Opinions, above, in cases involving known or likely claims by or against the Government, recommendations should not reach ultimate liability issues or suggest settlement positions.

Exhibit (7-F)**DISABILITY OF A RESERVIST DUE TO INJURY OR ILLNESS**

1. The following checklist is intended as a guide to assist Investigating Officers in preparing legally sufficient investigations regarding injury or illness of a Reservist. It is not intended to rigidly structure an investigation, but is intended to ensure thoroughness and to backstop the Investigating Officer, as necessary. If it becomes apparent that a line of duty/misconduct determination is appropriate, the guide provided as Exhibit 7-B should also be consulted. This guide supplements the generic guide is designed for use in every injury to Coast Guard members, Exhibit (7-E), due to the inherent difficulty often associated with delayed recognition of injury or illness to Reservists, specifically, the difficulty (sometimes) in knowing whether current symptoms were caused (or exacerbated) on duty or off duty.
 - a. Facts. NOTE: Each fact must be supported by evidence included and referenced as an Exhibit.
 - _____ (1) Identify the persons involved. Make a special effort to identify and obtain point of contact information for next of kin.
 - _____ (2) Describe the events leading up to the diagnosis of illness or disease.
 - _____ (3) Diagnosis noted.
 - _____ (4) Prognosis for patient noted.
 - _____ (5) State the medically accepted course of illness or disease.
 - _____ (6) Describe the actions of parties contributing to illness or disease.
 - _____ (7) Note when illness or disease most likely contracted, according to the statements of treating physicians, documentary evidence, or statements of witnesses.
 - _____ (8) Status of Reservists when illness or disease contracted. (Has injury or disease contracted enroute active duty training or inactive duty training? If so, give details of timing, route, etc.)
 - _____ (9) Physical effects of disease stated.
 - a. Opinions. NOTE: Each opinion should refer to the supporting Findings of Fact.
 - _____ (1) Cause of illness or disease.
 - _____ (2) Whether illness contracted in LOD.
 - _____ (3) Whether case is proper one for the Physical Disability Evaluation System (PDES).
 - c. Recommendations. NOTE: Each recommendation must be supported by evidence included and referenced as an Exhibit, and should also refer to supporting Opinions, which, in turn, refer to supporting Findings of Fact.
 - _____ (1) Regarding referral to PDES.
 - _____ (2) Regarding disciplinary action.
 - _____ (3) Regarding appropriate administrative actions.

Exhibit (7-G)

U.S. DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-3822 (REV. 7-06)		INJURY REPORT FOR NOT MISCONDUCT AND IN LINE OF DUTY DETERMINATION <i>Submit typewritten original to the COMMANDANT (GLGL)</i>			
FROM (Name of reporting Command)					
TO: COMMANDANT (G-LGL) WASHINGTON, DC 20593-0001			VIA: COMMANDER, MLC COMMANDER, _____ (e) or COAST GUARD DISTRICT (dl)		
COPY TO (Individual's own command if report is made by another activity)					
1 NAME (Last, first, middle initial)		2 SERVICE NUMBER	3 GRADE	4. <input type="checkbox"/> USCG <input type="checkbox"/> USCGR	
5 FIRST SEEN BY MEDICAL OFFICER		DATE	TIME	PLACE	
6 DIAGNOSIS					
7. CONDITION OF INDIVIDUAL AT TIME OF EXAMINATION					
A. UNDER INFLUENCE OF			B. <input type="checkbox"/> NOT UNDER THE INFLUENCE OF ANY LISTED IN ITEM 7A		
<input type="checkbox"/> ALCOHOL <input type="checkbox"/> BARBITURATES <input type="checkbox"/> NARCOTICS <input type="checkbox"/> OTHER (specify)			C. <input type="checkbox"/> UNABLE TO DETERMINE DUE TO PHYSICAL CONDITION		
8. BASIS FOR OPINION IN 7A OR 7B ABOVE					
A. CLINICAL FINDINGS (specify)					
B. BLOOD SPECIMEN FOR ALCOHOL DETERMINATION		TYPE OF TEST	HOUR TAKEN	RESULT	
<input type="checkbox"/> WAS TAKEN <input type="checkbox"/> WAS NOT TAKEN					
C. ANY OTHER TESTS (specify)					
9 ALLEGED CIRCUMSTANCES (INITIALLY REPORTED)					
10 IT IS POSSIBLE THAT THE FOLLOWING DISABILITY MAY RESULT					
<input type="checkbox"/> TEMPORARY		<input type="checkbox"/> PERMANENT PARTIAL		<input type="checkbox"/> PERMANENT TOTAL	
11 ESTIMATED LOSS OF TIME FROM DUTY AS A RESULT OF INJURY					
12 AT THE TIME OF THIS OCCURRENCE THE INDIVIDUAL CONCERNED WAS					
<input type="checkbox"/> PRESENT FOR DUTY		<input type="checkbox"/> LEAVE OR LIBERTY		<input type="checkbox"/> ABSENT WITHOUT AUTHORITY (complete A & B)	
A. INDIVIDUAL WAS ABSENT WITHOUT AUTHORITY FROM		PERIOD OF ABSENCE		B. ABSENCE MATERIALLY INTERFERED WITH MILITARY DUTY	
<input type="checkbox"/> PLACE OF DUTY <input type="checkbox"/> RESTRICTION <input type="checkbox"/> ARREST		FROM (Hour & date): TO (Hour & date):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
13 THE PERSON CONCERNED WAS					
<input type="checkbox"/> PERFORMING MILITARY DUTY		<input type="checkbox"/> IN A MILITARY VEHICLE		<input type="checkbox"/> AS OPERATOR	
<input type="checkbox"/> PARTICIPATING IN SERVICE PLANNED RECREATION		<input type="checkbox"/> IN A MILITARY AIRCRAFT		<input type="checkbox"/> AS CREW MEMBER	
		<input type="checkbox"/> IN A CIVILIAN VEHICLE		<input type="checkbox"/> AS PASSENGER	

PREVIOUS EDITION IS OBSOLETE

Reverse of CG-3632 (Rev. 6-74) NAME: _____		SSN: - - DATE: _____	
14. AS A RESULT OF MY INVESTIGATION, I HAVE DETERMINED THE CIRCUMSTANCES TO BE: <i>(include time, date and place, and if injured person is member of reserve component attach copy of orders)</i>			
15. SOURCES OF INFORMATION <i>(List names and addresses of witnesses, identify documents or other evidence)</i>			
16. REMARKS			
It is the opinion of the undersigned that the injury in question was incurred in the line of duty, and not as the result of subject man's own misconduct.			
SIGNATURE OF INDIVIDUAL MAKING THE INQUIRY		SIGNATURE AND RANK OF COMMANDING OFFICER (OR ONE AUTHORIZED TO SIGN BY HIS DIRECTION)	
FORWARDED APPROVED		APPROVED	
SIGNATURE OF DISTRICT/ACC COMMANDER		SIGNATURE OF CHIEF COUNSEL, U.S. COAST GUARD	
BY DIRECTION		BY DIRECTION	

Exhibit (7-H)

U.S. DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-4614 (Rev. 6-04)		REPORT OF ILLNESS OF RESERVIST									
For NOT MISCONDUCT and IN LINE OF DUTY determination in accordance with Chapter IV, Coast Guard Supplement, MCM (CG-241). Use this form ONLY for ACJU where orders are not in excess of 30 days, ACJUTRA or INACJUTRA. Submit original and 4 copies to Commandant (G-LGL) via the district commander where the reservist's records are maintained.											
From: Commanding Officer, To: Commandant (G-LGL) Via: Commander, Coast Guard District											
1. NAME (Last, first, middle initial)		2. SERIAL NO.	3. RANK/RATE USCGR-								
4A. DATE ILLNESS FIRST NOTED, IF KNOWN		4B. DATE ILLNESS FIRST TREATED									
5. NAME OF DOCTOR (If military, include rank and service)		ADDRESS OF DOCTOR (Include Zip Code)									
6A. DIAGNOSIS		6B. PROGNOSIS									
7. THE ILLNESS WAS/WILL BE: <input type="checkbox"/> TEMPORARY <input type="checkbox"/> CHRONIC, BUT NOT COMPLETELY DISABLING <input type="checkbox"/> PERMANENTLY DISABLING											
8. ESTIMATED LOSS OF TIME FROM DUTY OR DATE FIT FOR FULL DUTY _____											
9. HOSPITALIZATION AND/OR TREATMENT <u>will</u> BE COMPLETED PRIOR TO TERMINATION OF TRAINING DUTY. ESTIMATED DATE RESERVIST WILL BE RELEASED FROM INPATIENT TREATMENT _____ AND FIT FOR DUTY _____											
10. MEMBER WAS: _____ AND _____ <table style="width:100%; border:none;"> <tr> <td><input type="checkbox"/> PERFORMING MILITARY DUTY</td> <td><input type="checkbox"/> ON 45 DAY COMPLIANCE MEASURE ORDERS</td> </tr> <tr> <td><input type="checkbox"/> PRESENT FOR DUTY</td> <td><input type="checkbox"/> ON ACJUTRA OR ACJU ORDERS FOR 30 DAYS OR LESS</td> </tr> <tr> <td><input type="checkbox"/> PARTICIPATING IN SERVICE-PLANNED RECREATION</td> <td><input type="checkbox"/> ON ACJUTRA ORDERS FOR MORE THAN 30 DAYS</td> </tr> <tr> <td><input type="checkbox"/> ON AUTHORIZED LEAVE OR LIBERTY</td> <td><input type="checkbox"/> ON INACTIVE TRAINING DUTY REQUIRING ORDERS</td> </tr> </table>				<input type="checkbox"/> PERFORMING MILITARY DUTY	<input type="checkbox"/> ON 45 DAY COMPLIANCE MEASURE ORDERS	<input type="checkbox"/> PRESENT FOR DUTY	<input type="checkbox"/> ON ACJUTRA OR ACJU ORDERS FOR 30 DAYS OR LESS	<input type="checkbox"/> PARTICIPATING IN SERVICE-PLANNED RECREATION	<input type="checkbox"/> ON ACJUTRA ORDERS FOR MORE THAN 30 DAYS	<input type="checkbox"/> ON AUTHORIZED LEAVE OR LIBERTY	<input type="checkbox"/> ON INACTIVE TRAINING DUTY REQUIRING ORDERS
<input type="checkbox"/> PERFORMING MILITARY DUTY	<input type="checkbox"/> ON 45 DAY COMPLIANCE MEASURE ORDERS										
<input type="checkbox"/> PRESENT FOR DUTY	<input type="checkbox"/> ON ACJUTRA OR ACJU ORDERS FOR 30 DAYS OR LESS										
<input type="checkbox"/> PARTICIPATING IN SERVICE-PLANNED RECREATION	<input type="checkbox"/> ON ACJUTRA ORDERS FOR MORE THAN 30 DAYS										
<input type="checkbox"/> ON AUTHORIZED LEAVE OR LIBERTY	<input type="checkbox"/> ON INACTIVE TRAINING DUTY REQUIRING ORDERS										
11. ATTACH CERTIFIED COPY OF ORDERS TO ACTIVE OR INACTIVE TRAINING DUTY, AS APPLICABLE											
REPORTED FOR DUTY	DATE	TIME	PLACE								
RELEASED FROM DUTY	DATE	TIME	PLACE								

PREVIOUS EDITION IS OBSOLETE

Page 2 of CG-4614 (Rev. 6-04)

12. As a result of my investigation, I have determined the circumstances to be:
(Include all pertinent details of symptoms and medically accepted estimated incubation period of disease.)

13. Sources of information *(list and identify documents, doctor's statements and Reservist's statement, if any; attach certified copies of each.)*

14. RECOMMENDATION(S):

- Notice of Eligibility for Disability Benefits, including pay and allowances, be issued.
- Notice of Eligibility for Disability Benefits, (medical treatment only) be issued.
- Other: _____

15. It is the opinion of the undersigned that the illness in question was incurred IN LINE OF DUTY and WAS NOT DUE TO MISCONDUCT.

Signature

16. ACTION OF THE DISTRICT COMMANDER OR COMMANDING OFFICER TRAINING CENTER

16.

1. FORWARDED, approved _____ for the following reasons:

2. (If on ACDUTRA orders stipulating more than 30 days, and not on compliance orders under 10 USC 270(b)).
 A Notice of Eligibility for Disability Benefits, including entitlement to pay and allowances, has been issued.

OR

2. (If on ACUDU or ACDUTRA orders for 30 days or less, on compliance orders under 10 USC 270(b) or on INACDUTRA).
 A Notice of Eligibility for Disability Benefits entitling the member to medical treatment only, has been awarded.

(DELETE THE INAPPLICABLE STATEMENT ABOVE)

Signature

17. ACTION OF COMMANDANT

17.

- APPROVED.
- DISAPPROVED for the following reasons:
- RETURNED for the following action:

Signature